IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11-04-2005

CORAM

THE HONOURABLE MR. JUSTICE N.KANNADASAN

WRIT PETITION No.13943 of 1996

The Management of Sri Ganapathy
Mills Company Ltd.,
Sankarnagar-627 357,
Tirunelveli represented by its
Managing Director. .. Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.A.Asamathulla .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorari, calling for the records of the first respondent in its award in I.D.No.235 of 1983 dated 29.1.1996 and quash the same.

For Petitioner : Mrs.Narmada Sampath for
Mr.R.Parthiban

For Respondent-2 : Mr.V.Prakash,
Senior Counsel for
Ms.G.Ramapriya.

ORDER

The above writ petition is filed for the relief as stated therein.

2. The petitioner is a public limited company registered under the provisions of the Companies Act. While the second respondent was working as an Assistant Fitter in the Spinning Department, on 3.3.1982, he was assigned the work of changing the wheel in the frame No.56 to convert the frame from 20s counts to 80s counts and he took 4-1/2 hours to complete the said work. According to the petitioner-management, even though to complete the said work, the normal time required is only 1-1/2 hours, the second respondent

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

has completed the work very slowly by consuming more time resulting in loss of production and his act amounted to misconduct. According to the petitioner-management, the second respondent has committed similar misconduct on earlier occasions for which he was orally warned. Hence, a charge memo dated 4.3.1982 was served upon the second respondent to which he has submitted necessary explanation. An enquiry was conducted and after completion of enquiry, the second respondent was dismissed from service, by order dated 10.5.1982. As against the said order of dismissal, an Industrial Dispute was raised and the first respondent/Labour Court has set aside the order of dismissal, against which the present writ petition is filed.

3. According to the learned counsel for the petitioner, the Labour Court having come to a conclusion that the departmental enquiry conducted was not fair and proper, without independently considering the evidence adduced on behalf of the management, has chosen to pass the award by placing reliance upon several materials and evidences pertaining to the domestic enquiry. In this connection, the learned counsel placed reliance upon the decision of the Apex Court in NEETA KAPLISH vs. PRESIDING OFFICER, LABOUR COURT (AIR 1999 SC 698) and contended that the order of the Labour Court is liable to be set aside.

4. Learned Senior Counsel appearing for the second respondent would contend that the Labour Court has passed an award by considering the fact that the management has failed to substantiate the charges by producing necessary documentary evidences. According to the learned senior counsel, the only evidence available on record on behalf of the management to substantiate the charges as against the second respondent is the oral evidence of management witness viz., MW.1 and Ex.M.23. MW.1, while deposing before the Labour Court, has placed reliance upon the entries made in Ex.M.23 which is a extract of the log book maintained by the management and stated that the normal consumption time to complete the work of similar nature will be about one hour and thirty minutes or so. Even though such an evidence was tendered, the management instead of marking the entire log book, has marked the relevant extract pertaining to the date of occurrence viz., 3.3.1982 which would disclose the actual time consumed by the second respondent pertaining to the charges and the extract relating to the subsequent date viz., 4.3.1982 to substantiate that the time consumed by another employee to execute the similar work was one and half hours but failed to mark the entire log book. Learned senior counsel strenuously contended that the management was not precluded by either marking the entire log book or atleast the extract pertaining to the previous period viz., prior to 3.3.1982.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

5. Learned senior counsel would further add that the failure on the part of the management to make available the entire log book before the Labour Court was taken note of and by considering the other evidences, the Labour Court has rightly passed the Award and the same does not call for interference.

6. I have considered the rival contentions of the learned counsel appearing on either side.

7. As regards the contention urged by the learned counsel for the petitioner-management is concerned to the effect that when a finding is rendered by the Labour Court to the effect that the domestic enquiry conducted therein was not fair and proper, the same shall not be relied upon, the said contention is acceptable in the light of the decision of the Apex Court in Neeta Kaplish's case referred supra. While passing the award which is impugned in the writ petition, the Labour Court has chosen to place reliance upon the materials pertaining to the domestic enquiry on several occasions. The Labour Court has rendered a finding that as per the proceedings in the domestic enquiry viz., Ex.M.18, there is no specific allegation in Ex.M.2 to the effect that the second respondent was negligent or completed the work in a slow manner. A further reference is made in the award about the evidence of one Esaki Muthu, who was cited as management witness viz., MW.2 in the domestic enquiry. It is pertinent to note that the said Esaki Muthu has not deposed before the Labour Court, but however, his evidence is relied upon by referring to Ex.M.18 viz., the proceedings of the domestic enquiry. Similarly, the Labour Court has relied upon the evidence adduced by the management viz., MW.1 and MW.2 in the domestic enquiry and rendered a finding that as per the oral evidence of MW.1 and MW.2 the documents viz., Exs.M.1 to M.3 marked in the domestic enquiry were not proved. The Labour Court has rendered a finding that Ex.M.2 viz., the chargesheet cannot be proved by placing reliance upon the various proceedings of the domestic enquiry.

8. In this connection, it is useful to refer to the decision of the Apex Court in NEETA KAPLISH vs. PRESIDING OFFICER, LABOUR COURT (AIR 1999 SC 698), wherein in para-26 it is set out as hereunder:-

> "26. The record pertaining to the domestic enquiry would not constitute "fresh evidence" as those proceedings have already been found by the Labour Court to be defective. Such record would also not constitute "material on record", as contended by the counsel for the respondent, within the meaning of Section 11-A at the enquiry

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

> proceedings, on being found to be bad, have to be ignored altogether. The proceedings of the domestic enquiry could be, and, were, in fact, relied upon by the Management for the limited purpose of showing at the preliminary stage that the action taken against the appellant was just and proper and that full opportunity of hearing was given to her in consonance with the principles of natural justice. This contention has not been accepted by the Labour Court and the enquiry has been held to be bad. In view of the nature of objections raised by the appellant, the record of enquiry held by the Management ceased to be "material on record" within the meaning of Section 11-A of the Act and the only course open to the Management was to justify its action by leading fresh evidence as required by the Labour Court. If such evidence has not been led, the Management has to suffer the consequences."

9. In the light of the above observation, it is clear that the entire record of enquiry held by the management ceased to be a "material on record". Inasmuch as the entire material on record in the domestic enquiry ceased, the action of the Labour Court in placing reliance upon the same on various occasions to discard the evidence of the management is unsustainable in law.

10. As far as the further contention urged by the learned senior counsel for the second respondent that the management has failed to substantiate the charges by adducing independent evidence, more particularly the entire log book is concerned. In this connection, it is useful to refer to Ex.M.23. It is not in dispute that as per Ex.M.23, the time consumed by the second respondent to complete the work on 3.3.1982 is about four hours and thirty minutes. The time consumed to complete similar nature of work by another employee pertaining to the next date viz., on 4.3.1982 is concerned, it is disclosed therein that the work was completed in one and half hours. Even though the management has not filed the entire log book and also not chosen to file any extract prior to 3.3.1982, while cross-examining MW.1, no specific suggestion was put in this regard. The only question that was put to the said witness was to the effect that as to whether he can produce the log book to which he has answered that he can answer the said question only after ascertaining from the management. It is pertainent to note that MW.1 viz., Mani, was employed at the relevant point of time as a supervisor. He was employed in the petitioner-Mill from 1978 till 1994 and the occurrence took place on 3.3.1982. On the date of deposing before the Labour Court, he was not employed in the petitioner-Mill. His evidence proceeds to the effect that since the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

second respondent has not completed the work within the prescribed time, he has reported the matter to the higher authority. While cross-examining him, no suggestion was put to him to the effect that there was some personal motive existing as between MW.1 and the second respondent. The only suggestion that was put while examining him was that the departmental action was initiated as against the second respondent since he happens to be a member of AITUC. There is nothing on record to suggest that the second respondent was holding a responsible post in the AITUC union except an ordinary membership. Hence, it cannot be suggested that the petitioner-management has initiated action as against the second respondent with a mala fide motive since he happens to be a member of the abovementioned union. In the light of the evidence adduced by MW.1 and in the absence of eliciting any information about the non production of the entire log book or extracts prior to 3.3.1982, the argument of the learned senior counsel to the effect that non-production of the entire log book disproves the claim of the petitioner-management is not acceptable.

11. Further the Labour Court has rendered a finding that as per Ex.M.2, the negligence of the second respondent was not disclosed. A perusal of Ex.M.2 discloses that the second respondent has consumed nearly four hours and fifteen minutes to complete the change of frames, even though the said work can be executed within one hour and fifteen minutes and as such, there is loss of production for three hours. The said exhibit further proceeds to the effect that the second respondent has consumed more time with an oblique motive of creating trouble as well loss of production to the management, even though he was warned in this regard on earlier occasion. The relevant portion is extracted as hereunder:-

"ஏற்கனவே பலமுறை உம்முடைய மேலதிகாரிகள் நீர் பல் சக்கரங்களை மாற்றுவதற்காக கூடுதலான கால அவகாசத்தை எடுத்துக் கொள்வது பற்றி நேரிலேயே எச்சரித்திருந்தும் நீர் திருந்தாமல் இருப்பதிலிருந்து வேண்டுமென்றே திட்டமிட்டு நிர்வாகத்திற்கு இடைஞ்சலையும், உற்பத்தி நஷ்டத்தையும் செய்ய வேண்டும் என்ற நோக்கத்தோடு செய்வதாகவே தெரிய வருகிறது"

12. In the light of the above observation, it cannot be construed that Ex.M.2 chargesheet does not suggest the misconduct on the part of the second respondent. However, the Labour Court has rendered a finding that there is no specific reference making allegation of negligence or misconduct on the part of the second respondent which is factually not correct.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

13. In the light of the above discussions, I am of the view that the order of the Labour Court in is set aside and the matter is remitted for fresh disposal. It is open to both the respective parties to adduce further evidence in accordance with law. Considering the fact that the second respondent has reached the age of superannuation, even prior to passing of award, the Labour Court is directed to dispose of the matter within a period of three months from the date of receipt of a copy of this order. Till such disposal, the amount which was already deposited by the petitioner in pursuance of the interim order granted in the above writ petition, shall continue to remain in such deposit. The writ petition is allowed as stated above. No costs.

svn

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Presiding Officer,
Labour Court,
Tirunelveli.

+ 1 cc to Ms.G.Ramapriya, Advocate SR 17077

+ 1 cc to Mr.R.Parthiban, Advocate SR 17506

NG(CO)
SR/16.4.2005

ORDER IN
WP.13943 of 1996

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/